

### **DETAILED ACTION**

Claims 1, 10, 14, 28 and 32-36 are currently pending in the instant application. Claims 1, 10, 14 and 28 are rejected. Claims 32-35 are objected. Claim 36 appears allowable.

#### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 16 May 2011 has been entered.

#### ***Response to Amendment and Arguments***

Applicants' amendment and arguments filed 16 May 2011 have been considered and entered into the instant application. Applicants amendment has overcome the objection to the claims as containing non-elected subject matter and has overcome the 35 USC 102(b) rejection.

#### ***Election/Restrictions***

As per MPEP 803.02, the examiner will determine whether the entire scope of the claims is patentable. Applicants' elected species is considered allowable and Applicant has overcome the previous 35 USC 102(b) rejection. Therefore, the examiner has extended the search and examination to the entirety of claims 1, 10, 14 and 32-36 which appear allowable over the prior art of record.

Claims 1, 10, 14 and 32-36 are directed to an allowable product (excluding the 35 USC 112 2<sup>nd</sup> paragraph and claim objections). Pursuant to the procedures set forth in MPEP § 821.04(B), claim 28 directed to the process of making or using an allowable product, previously withdrawn from consideration as a result of a restriction requirement, is hereby rejoined and fully examined for patentability under 37 CFR 1.104.

Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 13 June 2008 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

#### ***Claim Objections***

Claims 32-35 are objected to as being dependent upon a rejected base claim, but would appear to be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Allowable Subject Matter***

Claim 36 is allowable.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

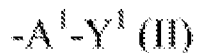
The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 10, 14 and 28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, claims 1 and 28 have a definition of R2 that is considered indefinite as R2 is now defined to be phenyl with one substituent:

-selected from the group consisting of  
group represented by the following formula (II), the group represented by the following for  
(III), the group represented by the following formula (VI), and the group represented by the  
following formula (V) in the following Group (A), wherein the phenyl group may have on  
further halogen atom as a substituent).

. However, later in the definition of Group (A) from which formula (II), (III), (VI) and (V) obtain their definitions, the following formula are defined:

a group represented by the following formula (II):



;

a group represented by the following formula (III):



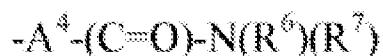
;

a group represented by the following formula (IV):



; and

a group represented by the following formula (V):



(V)

Therefore, it is unclear what the variable R2 encompasses as the formula (VI) is not defined in the instant claims. It is suggested that the "formula (VI)" in claims 1 and 28 be amended to "formula (IV)". Additionally, it is noted that "wherein" is spelled incorrectly in claims 1 and 28 as "whierein".

### Conclusion

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rebecca L. Anderson whose telephone number is (571) 272-0696. Mrs. Anderson can normally be reached Monday through Friday from 6:00am until 2:30pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Joseph K. McKane, can be reached at (571) 272-0699.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1626

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*/Rebecca Anderson/  
Primary Examiner, AU 1626*

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Rebecca Anderson  
Primary Examiner  
Art Unit 1626, Group 1620  
Technology Center 1600